

FILED

FEB 23 2004

CATHY A. CATTERSON
U.S. COURT OF APPEALS

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SKOKOMISH INDIAN TRIBE, a federally recognized Indian tribe in its own capacity as a class representative and as parens patriae; DENNY S. HURTADO; GORDON A. JAMES; JOSEPH PAVEL; ANNE PAVEL; MAURES P. TINAZA; CELESTE F. VIGIL; ROSLYNNE L. REED; GARY W. PETERSON, RITA C. ANDREWS; TOM G. STRONG; MARIE E. GOULEY; VICTORIA J. PAVEL; DENNIS W. ALLEN; JOSEPH ANDREWS, SR.; ZETHA CUSH; ELSIE M. ALLEN; ALEX L. GOULEY, JR.; LAWRENCE L. KENYON; DORIS MILLER; GERALD B. MILLER; HELEN M. RUDY; RONALD D. TWIDDY, SR. NICK G. WILBUR. SR.,

Petitioners - Appellants,

v.

UNITED STATES OF AMERICA; TACOMA PUBLIC UTILITY, a Washington municipal corporation; CITY OF TACOMA, a Washington municipal corporation; WILLIAM BARKER, Tacoma Public Utilities Board Member in his official capacity; TOM HILYARD, Tacoma Public Utilities Board Member in his official capacity; ROBERT LANE; TIM STREGE; G. E. VAUGHN,

Defendants - Appellees.

SKOKOMISH INDIAN TRIBE, a federally recognized Indian tribe in its own capacity as a class representative and as parens patriae; DENNY

No. 01-35028

D.C. No. CV-99-05606-FDB
Western District of
Washington, Tacoma

ORDER

No. 01-35845

D.C. No. CV-99-05606-FDB

S. HURTADO; GORDON A. JAMES; JOSEPH PAVEL; ANNE PAVEL; MAURES P. TINAZA; CELESTE F. VIGIL; ROSLYNNE L. REED; GARY W. PETERSON; RITA C. ANDREWS; TOM G. STRONG, MARIE E. GOULEY; VICTORIA J. PAVEL; DENNIS W. ALLEN; JOSEPH ANDREWS, SR.; ZETHA CUSH; ELSIE M. ALLEN; ALEX L GOULEY, JR. LAWRENCE L. KENYON; DORIS MILLER; GERALD B. MILLER; HELEN M. RUDY; RONALD D. TWIDDY, SR.; NICK G. WILBUR, SR., Skokomish Indian Tribal members for themselves and all others similarly situated,

Plaintiffs - Appellants,

v.

TACOMA PUBLIC UTILITY, a Washington municipal corporation; CITY OF TACOMA, a Washington municipal corporation; WILLIAM BARKER, Tacoma Public Utilities Board Member in his official capacity; TOM HILYARD, Tacoma Public Utilities Board Member in his official capacity; ROBERT LANE; TIM STREGE; G. E. VAUGHN; UNITED STATES INTERNAL REVENUE SERVICE,

Defendants - Appellees.

Western District of
Washington, Tacoma

ORDER

Before: SCHROEDER, Chief Judge.

Upon the vote of a majority of nonrecused regular active judges of this court, it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.